

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2002-151

December 5, 2002

MAINE PUBLIC UTILITIES COMMISSION
Investigation into the Adequacy of Utility
Services in Maine during Power Outages

TEMPORARY PROTECTIVE
ORDER NO. 4
Highly Sensitive Program
Performance Analysis and
Recommendations

Central Maine Power Company ("CMP" or the "Company") has been asked to provide highly sensitive program performance and analysis information regarding the Company's internal analysis of its storm outage response to the January 2002 storm (see ODR-01-09: "Please provide any and all documentation and recommendations from the team involved in critiquing the January 2002 storm.") The Company considers this critique and related documents, as well as any resulting recommendations, to be highly sensitive proprietary business information that the Company considers confidential.

Disclosure of this information on other than a very limited basis could be extremely damaging to the Company's business interests. This information contains frank exchanges and evaluations regarding specific personnel performance and constitutes protected employee records under 35-A M.R.S.A. § 114(1)(A). Release of such information would be damaging to the interests of CMP and its employees, adversely affecting CMP's ability to retain and attract qualified personnel and invading the personal privacy of CMP employees. These materials include evidence of subsequent remedial measures, which also is protected. Finally, to the extent this critique reveals critical energy infrastructure information regarding the Company's emergency restoration plans and, in particular, problems or weaknesses in the current program, CMP asserts that such data should be subject to limited disclosure in order to protect the transmission and distribution system from security threats.

The Company considers the "Storm Critique 2002" and related documentation and materials to be highly sensitive and proprietary business information, specifically developed to address CMP's unique business needs, and thus confidential. CMP maintains that information of this kind constitutes trade secrets, and that it has value to competitors and others who may seek to harm the Company or its critical energy infrastructure, and that its release to any one other than the Commission and Public Advocate would be damaging to the interests of CMP and its employees. Section 1311-A (1)(A) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to protect the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c).

CMP is willing to produce the requested information on the condition that, notwithstanding the limitations in 35-A M.R.S.A. § 1311-A(1)(D)(2), a protective scheme be implemented to confine disclosure of the information to the Commission and the Public Advocate. Any party at any time can move for a finding that material subject to protection should no longer be so treated or that such other party be provided access to said information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials continues to be restricted by the terms of this Protective Order No. 4.

In order to expedite the provision of this information to the Commission, and subject to reconsideration in light of arguments by any intervenors, the Presiding Officer concludes that the limited and revocable protection requested by CMP is warranted under Rule 26(c) of the Maine Rules of Civil Procedure and Rules 407 and 507 of the Maine Rules of Evidence.

Accordingly, it is

O R D E R E D

1. That information pertaining to CMP's "Storm Critique 2002", including related documentation and information regarding storm outage performance analysis and recommendations, shall be considered "Designated Confidential Business Information" for purposes of this Order and, until such time as this Order is modified, access to Designated Confidential Information shall be limited as described in Paragraph 4 below.

2. That all Designated Confidential Business Information shall, unless removed from the coverage of this Order as provided in paragraph 3 below, be and remain confidential. Designated Confidential Business Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Order. No person to whom access to Designated Confidential Business Information is accorded pursuant to paragraph 4 of this Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Business Information to others, except as provided in paragraph 4.

3. That the parties to whom Designated Confidential Business Information is furnished may challenge the designation of any documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. Upon the entry of a final unappealed decision granting such a motion, the provisions and restrictions of this Order shall cease to bind any party or other person with respect to the documents or information that the order granting the motion shall have expressly and clearly removed from the coverage of this Order.

4. That, until this Order is modified, access to Designated Confidential Business Information shall be limited to (i) Commission members and counsel; (ii) the Public Advocate and counsel; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; and (iv) counsel for or any other representative of CMP.

5. That all materials claimed by CMP to be Designated Confidential Business Information under the terms of this Order shall be clearly marked "Confidential and Privileged" by CMP. In the case of documents, each page of any such document shall be stamped "Confidential and Privileged" in bold lettering in the upper right hand corner of each page including the cover letter. Any document or portion thereof not clearly and conspicuously marked "Confidential and Privileged" in bold lettering shall not be protected under the terms of this Order. Faxed materials should be marked as any other document. With regard to other media, diskettes should be marked "Confidential and Privileged" on the outside and, to the extent possible, each file on the diskette should be similarly identified. Any person or party subject to the terms of this Order who receives unmarked documents or materials which he/she believes CMP intended to be protected by the terms of this Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify CMP of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Order.

6. That no copies of Designated Confidential Business Information furnished by CMP shall be circulated to persons other than those persons who are authorized under Paragraph 4 of this Order to obtain Designated Confidential Business Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under Paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. Those notes shall also be treated as Designated Confidential Business Information.

7. That the restrictions upon, and obligations accruing to, persons who become subject to this Order shall not apply to any Designated Confidential Business Information submitted in accordance with paragraph 1 of this Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Business Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

8. That where reference to Designated Confidential Business Information is required in pleadings, briefs, other legal documents, or argument, that reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Business Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Business Information shall be maintained under seal.

9. That the Commission may draw upon all Designated Confidential Business Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of Designated Confidential Business Information.

10. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with paragraph 8 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

11. That this Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Business Information produced by Central Maine Power Company or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

12. That CMP may, at its option, provide to each person (other than the Commissioners or Commission Staff) having access Designated Confidential Business Information a copy of this Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Business Information.

13. That Designated Confidential Business Information furnished by CMP pursuant to this Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Order, until this Commission or its authorized presiding officer shall otherwise order.

14. That this Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

15. That within forty-five (45) days after the Commission reaches a final unappealed decision in this proceeding, copies of Designated Confidential Business Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Business Information, that are in the possession of parties to whom Designated Confidential Business Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Business Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

16. That, notwithstanding the requirements of paragraph 15 above, copies of Designated Confidential Business Information and documents, notes, and other materials that are in the possession of Commission members, counsel or employees of the Commission may be retained by those persons for the purpose of performing those

persons' duties and obligations. If retained, the Designated Confidential Business Information shall be subject to this Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Business Information is used. If a Commission member, counsel or employee of the Commission does not retain the Designated Confidential Business Information, that person shall destroy it as provided in paragraph 15 above.

17. That, unless otherwise ordered by the Commission, this Order expires one year after the issuance of the order concluding this proceeding.

Dated at Augusta, Maine, this 5th day of December, 2002.

BY ORDER OF THE HEARING EXAMINER

Trina M. Bragdon